

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

ELMO AUGUSTUS REID,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	7:16-cv-00547
)	
MARK AMONETTE, <i>et al.</i> ,)	
)	
Defendants.)	

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S PETITION TO ENFORCE THE
PARTIES' SETTLEMENT AGREEMENT**

The Defendants, by counsel, hereby state as follows in support of their Motion to Dismiss Plaintiff's Petition to Enforce the Parties' Settlement Agreement:

1. On October 1, 2018, Plaintiff filed a Petition to Enforce the Parties' Settlement Agreement. [Doc. no. 132.] In this petition, the Plaintiff averred that attorneys' fees had not been paid by September 21, 2018, pursuant to the parties' settlement agreement. *Id.*
2. In response, the Defendants filed a Memorandum in Opposition to this petition, explaining that through inadvertence the settlement agreement had not been submitted to the Division of Risk Management in the Department of Treasury for processing of the request for payment of attorneys' fees until September 26, 2018. [Doc. no. 133.] Further, the Defendants advised the court that the payment process typically takes 30 to 45 days. *Id.*
3. Based on these submission, on October 11, 2018, the Court issued an order deferring further action on the enforcement of the Plaintiff's Petition to Enforce the Parties' Settlement Agreement until October 26, 2018. [Doc. no. 134.]
4. On October 17, 2018, the Plaintiff's attorneys received payment for the attorneys' fees

pursuant to the settlement agreement. On October 23, 2018, Defendants filed a status report advising the court of this payment as well as the repayment of Defendant Shipp's witness appearance fee. [Doc. no. 137.] In addition, Plaintiff filed a similar status report confirming receipt of these payments. [Doc. no. 138.]

5. Plaintiff's Petition to Enforce the Parties' Settlement Agreement has now been mooted by the payment of these fees. Accordingly, Plaintiff's Petition should be dismissed.

6. In light of the foregoing, specifically the fact that the Defendants have satisfied their obligations for payment of attorneys' fees under the settlement agreement, the Defendants respectfully request that the Court dismiss Plaintiff's Petition for Enforcement of Settlement Agreement.

Respectfully submitted,

MARK AMONETTE, M.D.
BERNARD W. BOOKER
PAMELA SHIPP
STEVE HERRICK

/s/

Edward J. McNelis, III, VSB #34004
Elizabeth M. Muldowney, VSB #46387
SANDS ANDERSON PC
1111 East Main Street, Suite 2400
P.O. Box 1998
Richmond, Virginia 23218-1998
804-648-1636
804-783-7291 (fax)
emcnelis@sandsanderson.com
emuldowney@sandsanderson.com
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of October, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) to the following:

John P. Fishwick, Jr., Esq.

Monica L. Mroz, Esq.

FISHWICK & ASSOCIATES, PLC

101 S. Jefferson Street, Suite 500

Roanoke, VA 24011

540-345-5890

540-345-5789 (fax)

john.fishwick@fishwickandassociates.com

monica.mroz@fishwickandassociates.com

Counsel for Plaintiff

George A. Rutherglen, Esq.

University of Virginia School of Law

580 Massie Road

Charlottesville, VA 22903

804-924-7015

434-924-7536 (fax)

gar3h@virginia.edu

Co-Counsel for Plaintiff

/s/

Edward J. McNelis, III, VSB #34004

Elizabeth M. Muldowney, VSB #46387

SANDS ANDERSON PC

1111 East Main Street, Suite 2400

P.O. Box 1998

Richmond, Virginia 23218-1998

804-648-1636

804-783-7291 (fax)

emcnelis@sandsanderson.com

emuldowney@sandsanderson.com

Counsel for Defendants